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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,915	12/07/2001	Vikram Pillai	SBACK-001XX	6110
207	7590	01/13/2006	EXAMINER	
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP			GEREZGIHER, YEMANE M	
TEN POST OFFICE SQUARE			ART UNIT	PAPER NUMBER
BOSTON, MA 02109			2144	

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/010,915	PILLAI ET AL.
	Examiner	Art Unit
	Yemane M. Gerezgiher	2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 October 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 December 2001 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Response to Amendment

1. The response received on 10/12/2005 has been entered. Claims 1-25 remain pending in this application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3-8, 10-13, 15-20, and 22-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Staveley et al. (U.S. Patent Number 6,973,491) hereinafter referred to as Staveley.

As per claims 1, 13 and 25: A distributed method/system for performing network monitoring [Title and Abstract], comprising:

establishing, by an infrastructure management appliance, a secure virtual connection with a remote data center [Column 1, Lines 58-62, Column 2, Lines 12-14 and Figs. 1-2, Staveley disclosed a network management and

monitoring framework transmitting monitored and collected status of a communication device to a central data server/site via a session created between the monitoring module and the central data center], the infrastructure management appliance being connected to a public network, [Fig. 2 and Column 3, Lines 33-45, Staveley disclosed a network management and monitoring framework referred as “data collection system”, been connected to the public communication network (“Internet”)] the customer network being connectable to the public network [Column 3, Lines 33-45 and Figs. 1-2, Staveley disclosed a client network having therein plurality of communication devices, the client network been connected to the public communication network], wherein the establishing step includes establishing the secure virtual connection with the remote data center over the public network [Column 3, Lines 49-54, Staveley disclosed a secure communication connection created between the monitoring framework connected to the client network and the central data server via the Internet]; monitoring, by said infrastructure management appliance, at least one customer resource, the customer resource being connected to the customer network, wherein the monitoring step includes monitoring the customer resource over the customer network[Abstract, Figs. 1-2 and Column 1, Line 48 through Column 2, Line 14, Staveley disclosed monitoring target devices coupled to the client network]; and transmitting information obtained through said monitoring of said customer resource to said remote data center over said secure virtual connection

[Column 3, Lines 49-54 and Column 9, Lines 48-57, Staveley disclosed uploading the information collected by the data collectors of the monitoring framework to a central data server via a communication connection over the Internet through a secure communication connection. Furthermore, since the teachings of Staveley are performed in a computer system, a processor, a computer memory and a computer code were inherently disclosed by the teachings of Staveley].

As per claims 3 and 15: Staveley disclosed obtaining customer specific information from said remote data center, wherein said establishing of said secure virtual connection with said remote data center is responsive to said customer specific information [Column 3, Lines 49-53 Column 7, Line 60 through Column 8, Line 11 and Column 9, Lines 55-57, Staveley disclosed establishing a secure connection based on a client access configuration information].

As per claims 4 and 16: Staveley disclosed obtaining said customer specific information is performed over a first interface to said infrastructure management appliance [Column 9, Lines 55-57, client information initially is received over an HTTP interface], and wherein said establishing of said secure virtual connection with said remote data center is over a second interface to said infrastructure management appliance [Column 9, Lines 55-57, a secure connection is established over a secure interface (HTTPS/SSL)].

As per claims 5 and 17: Staveley disclosed monitoring of said at least one customer resource performed over said second interface to said infrastructure management appliance [Abstract, Figs. 1-2 and Column 1, Line 48 through Column 2, Line 14, Staveley disclosed monitoring target devices coupled to the client network where the remote monitoring of the communication devices of the client network is performed over the secure interface (HTTPS/SSL). See Column 9, Lines 55-57].

As per claims 6 and 18: Staveley disclosed obtaining of said customer specific information over said first interface to said infrastructure management appliance comprises obtaining said customer specific information through dial up access over a serial line to said data center [Abstract, Column 1, Lines 64-67, Column 3, Lines 8-10 and Column 3, Line 60 through Column 4, Line 2].

As per claims 7, 8, 19 and 20: Staveley disclosed obtaining of said customer specific information further comprises obtaining an network address (“obtaining an IP address”) of said infrastructure management appliance from said remote data center [Column 8, Lines 18-25].

As per claims 10 and 22: Staveley disclosed generating a synthetic transaction with respect to at least one customer application, and storing a result obtained from said customer application in response to said synthetic transaction [Column 3, Lines 15-59 and Column 4, 28-42, collecting status

information using the data collection application program(s) and storing the collected information in a database].

As per claims 11 12, 23 and 24: Staveley disclosed discovering at least one customer operational environment attribute [Column 1, Lines 61-67 and Column 13, Line 48 through Column 14, Line 15, user connection request to establish a communication session and customer attributes used in performing the steps]; and configuring said first interface to said infrastructure management appliance in response to said at least one customer operational environment attribute, wherein said at least one customer operational environment comprises a dial-out prefix. [Column 2, Line 63 through Column 3, Line 10 and Column 7, Line 60 trough Column 8, Line 11, client configuration attributes are collected, where the collected attributes include a dial-up access numbers in forming a communication connection].

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Staveley et al. (U.S. Patent Number 6,973,491) in view of Liu (U.S. Patent Number 6,079,020).

As per claims 2 and 14: The teachings of Staveley substantially disclosed the invention as claimed including establishing a secure communication connection with the central data server. However, Staveley was silent about establishing a VPN (Virtual Private Network). However as evidenced by the appreciation of Liu, establishing a Virtual Private Network was commonly known in the art at the time the invention was made. See Column 2, Lines 16-19.

Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to make use of the commonly known procedure of establishing a VPN in order to protect data transmitted over public networks. See Liu, Column 2, Lines 16-19.

6. Claims 9 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Staveley et al. (U.S. Patent Number 6,973,491) in view of Bhaskaran et al. (U.S. Patent Number 6,601,084) hereinafter referred to as Bhaskaran.

As per claims 9 and 21: The teachings of Staveley substantially disclosed the invention as claimed. However, Staveley failed to teach periodically polling of a server system to determine whether said server system is in an operational state.

However, as evidenced by the teachings of Bhaskaran, periodically polling of a server system to determine whether said server system is in an operational state was known in the art at the time of the invention. See Column 12, Lines 20-32.

Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Bhaskaran related to periodically polling a server and have modified the teachings of Staveley in order to determine functional status of a server. See Column 12, Lines 27-29.

Response to Arguments

7. Applicant's arguments with respect to claims 1, 13 and 25 have been considered but are moot in view of the new ground(s) of rejection, which properly address the invention as amended.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Chu et al. (US 6970924 B1) entitled: "Methods and apparatus for monitoring end-user experience in a distributed network", Chu disclosed periodically polling a network device connected to the network in order to determine whether a each device is in service or not (Column 21, Lines 52-54).

- b. Fletcher (US 6085243 A) entitled: "Distributed remote management (dRMON) for networks"
- c. Swales (US 6982953 B1) entitled: "Automatic determination of correct IP address for network-connected devices"
- d. Genty et al. (US 6473863 B1) entitled: "Automatic virtual private network internet snoop avoider"
- e. Paulsen et al. (US 6055575 A) entitled: "Virtual private network system and method"
- f. Brownell (US 6754831 B2) entitled: "Authenticated firewall tunneling framework"
- g. Fletcher et al. (US 6108782 A) entitled: "Distributed remote monitoring (dRMON) for networks"

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yemane M. Gerezgiher whose telephone number is (571) 272-3927. The examiner can normally be reached on 9:00 AM - 6:00 PM Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached at (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yemane M. Gerezgiher
Patent Examiner, Computer Science



DAVID WILEY
SUPPLYING PATENT EXAMINER
TECHNOLOGY CENTER 2100